

(v) *JAGMAN investigations (other than to next of kin)*. The Deputy Assistant Judge Advocate General having cognizance over the records at issue for litigation or prospective litigation purposes may release the records if a complete release will result. The Assistant Judge Advocate General (Civil Law) will make determinations concerning the release of the records specified in this subparagraph if a release of less than the complete requested record will result. A release to next of kin of incompetent or deceased DON personnel or their representatives is exempt from these requirements and this part.

(vi) *Affirmative claims files*. Affirmative claims files (including Medical Care Recovery Act files), except to the extent they contain copies of JAGMAN investigations prepared under the Manual of the Judge Advocate General, or classified or privileged information, may be released by the commanding officer of the Naval Legal Service Office having cognizance over the claim at issue, without compliance with this instruction, to: insurance companies to support claims; to civilian attorneys representing injured service persons, their dependents, and the Government's interests; and to other DOD components. When a request for production involves material related to claims in favor of the Government, either the cognizant Command Counsel or the Naval Legal Service Office having territorial responsibility for the area should be notified.

(vii) *Accounting for disclosures from "systems of records."* When compliance with a litigation request or demand for production of records is appropriate, or when release of records is otherwise authorized, and records contained in a "system of records," are released, the releasing official will consult Secretary of the Navy Instruction 5211.5C regarding disclosure accounting requirements.

(viii) *Pay records*. Official pay records of active-duty, reserve, retired, or former Navy members should be requested from Director, Defense Finance and Accounting Service (DFAS), Cleveland Center, Anthony J. Celebrezze Federal Building, Cleveland, OH 44199-2055. Official pay records of active-duty, reserve, retired, or former Ma-

rines should be requested from Director, Defense Finance and Accounting Service, Kansas City Center (Code G), Kansas City, MO 64197-0001.

(3) *Interviews, depositions, and testimony (where the United States is not, and is reasonably not expected to become, a party)*—(i) *Factual matters*. DON policy favors disclosure of factual matters when disclosure does not violate the criteria stated in this section. Distinguishing between factual matters and expert or opinion matters (where DON policy favors non-disclosure) requires careful analysis. Opinion matters are defined at §725.4(c).

(ii) *Expert, opinion, or policy matters*. Such matters are to be determined, under the delegation in §725.6, by the cognizant Deputy Assistant Judge Advocate General or by General Counsel. General considerations to identify expert or opinion testimony are in §725.4(c). DON personnel shall not provide, with or without compensation, opinion or expert testimony concerning official information, subjects, or activities, except on behalf of the United States or a party represented by the Department of Justice. Upon a showing by the requester of exceptional need or unique circumstances, and that the anticipated testimony will not be adverse to the interests of the DOD or the United States, the appropriate DON official designated in §725.6, may grant, in writing, special authorization for DON personnel to appear and testify at no expense to the United States. In determining whether exceptional need or unique circumstances exist, the determining official should consider whether such expert or opinion testimony is available to the requester from any other source. The burden of demonstrating such unavailability, if any, is solely upon the requester.

(iii) *Visits and views (where the United States is not, and is reasonably not expected to become, a party)*. Such disclosures are normally factual in nature and should not be accompanied by interviews of personnel unless separately requested and granted. The authority of the commanding officer of the activity, ship, or unit at issue is not limited by this part. Accordingly, he or she may prescribe appropriate